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UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

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In re:	*	
	*	CASE NO. 11-17988-RGM
Tony Bonilla	*	(Chapter 7)
Debtor(s).	*	
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TRUSTEE'S SUPPLEMENT TO OBJECTION TO EXEMPTIONS
AND REPLY TO DEBTOR'S REPONSE TO OBJECTION TO EXEMPTIONS

Since the filing of the Trustee's Objection To Exemptions, the Debtor has amended his Schedules to list and claim $1.00 of 2011 tax refunds as exempt. This amendment removes the first ground of the Trustee's Objection (as to $1.00), namely, that the Debtor did not list federal and state refunds in Schedule C. However, it does not remove the second ground of the Trustee's Objection, namely, that the recorded homestead deed claiming any tax refunds as exempt was filed one day too late under VA Code § 34-17.[1]

Concerning the second ground, the Debtor argues that the Trustee did not indicate at the Section 341 meeting that he would need evidence of the homestead deed's recordation. To the contrary, the Trustee specifically asked for evidence that the homestead deed had been sent to

[1] The Debtor says that the amendment gives the Trustee 30 days to file additional objections. The Trustee does not agree this is necessary because he has already objected to exemption of the same tax refunds. However, to avoid any question, the Trustee hereby renews his objection to the claimed exemption of the tax refunds on the grounds stated in the original Objection as modified in this Supplement.

the clerk in time to be recorded within five days of the Section 341 meeting. Be that as it may, the question is whether it got there in time, not what the Trustee asked for.

The Debtor argues that the Virginia Code does not require that a homestead deed setting apart personal property as exempt be recorded within five days of the Section 341 meeting. This argument is technically correct as far as it goes. There have been instances where exemptions claimed in a homestead deed have been upheld despite a clerk's failure to record a proper homestead deed delivered with the filing fee within five days of the Section 341 meeting until after the five-day period. But the issue in this case is whether the Debtor "filed a homestead deed in proper form with the right clerk, with fees paid, all prior to the deadline established by § 34-17 . . . ." Mayer v. Nguyen (In re Nguyen), 211 F.3d 105, 112 (4th Cir. 2000). By his own admission the Debtor did not. The *delivery* to the clerk was not until the sixth day after the Section 341 meeting.

The Debtor's reliance on In re Alley, 354 B.R. 783 (Bankr. W.D. Va. 2006) does not help his position. In that case the debtors had delivered "properly executed homestead deeds with fees paid to the Clerk of the Circuit of Pulaski County . . . within the time frame contemplated by Code of Virginia, § 34-17 for perfection of the claim of the homestead exemption." 354 B.R. at 787.

More to the point, and in fact dispositive, is Judge Mayer's reasoning in In re Ahmed, 411 B.R. 537 (Bankr. E.D. Va. 2009). Foreshadowing the precise facts in this case, Judge Mayer wrote:

> In this case, the debtor did not deliver the recorded deed to the clerk until after the five-day period expired. A debtor controls the manner in which he delivers a homestead deed to the clerk of a circuit court. . . . He may entrust it to a courier. . . . The choice is his. He runs the risk that delivery will not be completed before the expiration of the five-day

> period. . . . Thus, a debtor has set apart the property claimed exempt in his homestead deed only when he has actually delivered a properly executed and recordable homestead deed together with all applicable filing fees to the clerk, not when he deposits it in the mail or puts it in the hands of a delivery service or messenger.

411 B.R. at 539. Unfortunately for the Debtor, that is just what happened here. Whoever dropped the ball, it definitely got dropped, because the clerk did not receive the homestead deed until the sixth day after the Section 341 meeting. This may be a harsh result, but it is a result compelled by Virginia law that the Trustee believes neither he nor the Court has the discretion to circumvent on the facts of this case.

Respectfully submitted,

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Certificate Of Service

I hereby certify that on the 1st day of February, 2012 a copy of the foregoing was served through the court's ECF system on all registered ECF participants who have appeared in this case and by mail on:

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